

**REMARKS**

The claims are amended to further distinguish over the prior art, including U.S. Patent No. 6,547,346 (Topper et al.). Upon entry of this amendment, claims 17-37 will be pending.

Claims 17-24

As amended, claim 17 specifies that the cover of Applicant's food product server is attached to the product server for pivotal movement between a lowered substantially horizontal position covering the food products held by the product server and a raised position in which the cover serves as a breath guard providing a barrier to contamination of the food products by customers on the customer side of the server while allowing access to the food products from the employee side of the product server. This construction is not shown in Topper et al.

The Topper et al. patent discloses a dipping cabinet having a canopy 30 with a fixed transparent window 34 at the front of the cabinet and a transparent service door 40 at the rear of the cabinet. The service door pivots between the open position shown in Fig. 2, allowing access to the food product inside the cabinet, and the closed position shown in Fig. 1 in which access is denied. In its closed position, the service door 40 lies flat against a frame 42. To facilitate cleaning of the cabinet, the service door and frame can be pivoted as a unit to the raised position shown in Fig. 3. There are several important differences between Applicant's product server defined by amended claim 17 and the Topper et al. cabinet.

First, Applicant's claimed cover is movable from a lowered generally horizontal position in which it covers the food product. The service door 40 of Topper et al. never assumes such a position. Indeed, the service door 40

is not intended to cover the product 50 in the cabinet, which product remains completely exposed within the canopy 30.

Second, in Applicant's system, first and second power assist devices connected to the product server and to the cover assist the operator in pivoting the cover between its lowered generally horizontal position and its raised (breath guard) position. In Topper et al.'s cabinet, one gas spring 62 assists in moving the service door 40 to its Fig. 2 position, and another gas spring 64 assists in moving the service door 40 and frame 42 to the position shown in Fig. 3. Neither of these Fig. 2 and Fig. 3 positions corresponds to Applicant's claimed positions.

Further, Topper et al.'s service door 40 never serves as a breath guard within the meaning of amended claim 17. In its raised position, Applicant's cover functions as a breath guard which provides a barrier to contamination of the food products by customers on the customer side of the product server. The only structure in Topper et al. which serves as a breath guard with respect to such customers is the front window 34. The movable service door 40 cannot possibly act as a breath guard with respect to customers at the front of the cabinet, noting first that it is located behind the window 40 and second, that when it is swung up to its Fig. 3 position, it is located substantially to the rear of the food in the cabinet and is thus hardly in a position to serve as a barrier to contamination by customers standing at the front of the cabinet.

Applicant's claimed cover design is simple yet provides a dual function. When lowered to its generally horizontal position, it covers the food product to keep it fresh, and when raised it allows access to the food product from the employee side of the product server while acting as a breath guard to prevent contamination of the food by

customers on the customer side of the product server. These functions are achieved using a single cover, unlike the cabinet in Topper et al. having a front window 34 which acts as a breath guard and a separate service door 40 which, when open, allows access from the employee side but which does not, when lowered, assume a generally horizontal position to cover the food. Thus, Applicant's claimed design is fundamentally different from the cabinet disclosed by Topper et al.

In view of the foregoing, Applicant submits that claim 17, as amended, is neither anticipated by nor obvious in view of Topper et al. or the other prior art of record.

Claims 18-24 depend, either directly or indirectly, from claim 17 and are believed to be allowable for at least the same reasons as claim 17.

Further, claim 23 specifies that Applicant's food product server comprises a cabinet and a pan-receiving recess in the cabinet, and that the cover has hinge connections with the cabinet generally near a front of the cabinet. This configuration is not suggested by the Topper et al. cabinet, where the service door 40 pivots about connections 63, 67 located toward the rear of the cabinet.

Claim 24 depends from claim 23 and further specifies that the hinge connections are located forward of the pan-receiving recess, and that when the cover is pivoted toward its raised position it extends from the hinge connections upward toward the rear employee side of the product server for allowing access to the food products in the cabinet from the employee side of the product server. This claim further differentiates Applicant's invention from Topper et al. where the pivot connections 63, 67 for the service door 40 are located substantially rearward of the claimed location.

Claims 25-31

Like claim 17, claim 25 is amended to specify that the cover of Applicant's food product server is attached to the product server for pivotal movement between a lowered substantially horizontal position covering food products held by the product server and a raised position in which the cover serves as a breath guard providing a barrier to contamination of the food products from customers on the customer side of the server while allowing access to the food products from the employee side of the product server. This claim is submitted to be patentable for the same reasons given above in regard to claim 17.

Further, claim 25 specifies that a first power assist device is connected to the product server and to the cover for applying an upward force on the cover to assist pivotal movement of the cover from its lowered position to its raised position, and that a second power assist device is connected to the product server and to the cover for resisting movement of the cover from its raised position to its lowered position thereby providing controlled downward movement of the cover. The gas springs 62, 64 disclosed in Topper et al. do not provide any resistance to movement of the service door 40 to a lowered substantially horizontal position.

For these reasons, claim 25 is submitted to be allowable over the prior art of record.

Claims 26-31 depend, either directly or indirectly, from claim 25 and are believed to be allowable for at least the same reasons as claim 25.

Claims 32-37

Like claims 17 and 27, claim 32 is amended to specify that the cover of Applicant's food product server is attached to the product server for pivotal movement between

a lowered substantially horizontal position covering food products held by the product server, and a raised position in which the cover serves as a breath guard providing a barrier to contamination of the food products from the employee side of the product server.

For these reasons, claim 32 is submitted to be allowable over the prior art of record.

Claims 33-37 depend, either directly or indirectly, from claim 32 and are believed to be allowable for at least the same reasons as claim 32.

Further, claim 34 specifies that at least one power assist device is located on top of the cabinet. In contrast, the gas springs 62, 64 disclosed in Topper et al. are not located on top of the cabinet 10; rather they are located along the side walls 36 of the cabinet 10.

Claim 35 depends from claim 32 and further specifies that the food product server comprises at least one power assist device comprising a first gas spring pivotally attached at one end to the product server and pivotally attached at an opposite end to the cover for assisting movement of the cover from its lowered position toward its raised position, and a second damper pivotally attached at one end to the cover and pivotally attached at an opposite end to the frame for resisting movement of the cover from its raised position toward its lowered position. The gas springs 62, 64 disclosed in Topper et al. do not provide any resistance to movement of the service door 40 to a lowered substantially horizontal position.

Claim 36 depends from claim 35 and further specifies that the frame comprises a shelf spaced above the cabinet, and that the cover is disposed entirely below the shelf when the cover is in its raised position. The service door 40 and framework 42 disclosed in Topper et al. are not disposed entirely below the canopy 30 when in a raised

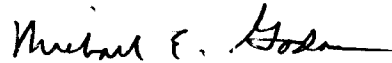
position; rather they extend above the canopy 30 as shown in Fig. 3.

Claim 37 depends from claim 32, and like claim 36, it specifies that the frame comprises a shelf spaced above the cabinet, and that the cover is disposed entirely below the shelf when the cover is in its raised position. As noted above in regard to claim 36, the service door 40 and framework 42 disclosed in Topper et al. are not disposed entirely below the canopy 30 when in a raised position; rather they extend above the canopy 30 as shown in Fig. 3. Accordingly, for these additional reasons claim 37 is believed to be allowable.

**CONCLUSION**

In view of the foregoing, favorable consideration and allowance of this application is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael E. Godar". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael E. Godar, Reg. No. 28, 416  
SENNIGER POWERS  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
(314) 231-5400

JRJ/MEG/bcw